

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DANIEL TEKLEMARIAM  
HAGOS,

Plaintiff,

v.

ERIC MUNOZ, et al.,

Defendants.

CASE NO. C21-1640JLR

ORDER

Before the court is United States Magistrate Judge Theresa L. Fricke's report and recommendation. (R&R (Dkt. # 14).) Magistrate Judge Fricke recommends that the court dismiss this prisoner civil rights action without prejudice prior to service for failure to state a claim upon which relief may be granted. (*Id.* at 1.) Plaintiff Daniel Teklemariam Hagos, who is proceeding *pro se* in this matter, filed a document entitled "Ineffective Assistance of Counsel Claim," which the court construes as a timely objection to Magistrate Judge Fricke's report and recommendation. (*See* Obj. (Dkt.

1 # 15).) Having carefully reviewed all of the foregoing, the balance of the record, and the  
2 applicable law, the court ADOPTS Magistrate Judge Fricke's report and recommendation  
3 and DISMISSES Mr. Hagos's amended complaint without prejudice.

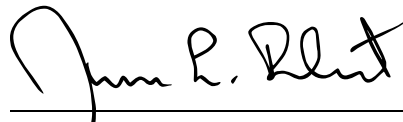
4 In relevant part, Magistrate Judge Fricke determined that Mr. Hagos's 42 U.S.C.  
5 § 1983 complaint named an improper defendant, Emma Carlin, who represented him as a  
6 state public defense attorney. (R&R at 5 (first citing *Polk County v. Dodson*, 454 U.S.  
7 312, 324-25 (1981) (holding that "a public defender does not act under color of state law  
8 when performing a lawyer's traditional functions as counsel to a defendant in a criminal  
9 proceeding"); and then citing *Miranda v. Clark County*, 319 F.3d 465, 468 (9th Cir.  
10 2002) (en banc) (dismissing state prisoner's § 1983 claims against his public defender  
11 and the head of the public defender's office).) Magistrate Judge Fricke also noted that  
12 even if Ms. Carlin were a state actor for the purposes of a § 1983 claim, a finding that her  
13 assistance was ineffective would necessarily interfere with Mr. Hagos's ongoing state-  
14 court criminal proceedings and the court would, therefore, likely be required to abstain  
15 from deciding the issue under *Younger v. Harris*, 401 U.S. 337, 45, 46 (1971). (See R&R  
16 at 5; see also *id.* at 4-5 (discussing *Younger* abstention).)

17 A district court has jurisdiction to review a Magistrate Judge's report and  
18 recommendation on dispositive matters. Fed. R. Civ. P. 72(b). "The district judge must  
19 determine de novo any part of the magistrate judge's disposition that has been properly  
20 objected to." *Id.*; *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en  
21 banc). Upon review, "[a] judge of the court may accept, reject, or modify, in whole or in  
22 part, the findings or recommendations made by the magistrate judge." 28 U.S.C.

1 § 636(b)(1). “The statute makes it clear that the district judge must review the magistrate  
2 judge’s findings and recommendations de novo if objection is made, but not otherwise.”  
3 *Reyna Tapia*, 328 F.3d at 1121.

4 Here, Mr. Hagos objects to Magistrate Judge Fricke’s recommendation to dismiss  
5 his ineffective assistance of counsel claim against Ms. Carlin. (*See generally* Obj.) In his  
6 objections, Mr. Hagos explains his understanding of the contours of the Sixth  
7 Amendment right to effective assistance of counsel and describes acts by Ms. Carlin that  
8 he believes constitute ineffective assistance of counsel. (*See generally id.*) His cited  
9 cases, however, arose in the context of state and federal habeas corpus actions rather than  
10 in civil rights cases brought under § 1983. (*See generally id.*) Mr. Hagos has not brought  
11 to the court’s attention any authority that calls into doubt Magistrate Judge Fricke’s  
12 conclusion that his § 1983 claim against his public defender is foreclosed under *Polk*  
13 *County*. (*See generally id.*; see R&R at 5 (citing *Polk County*, 454 U.S. at 324-25).)  
14 Therefore, on de novo review, the court DENIES Mr. Hagos’s objections (Dkt. # 15);  
15 ADOPTS Magistrate Judge Fricke’s report and recommendation (Dkt. # 14); and  
16 DISMISSES Mr. Hagos’s amended complaint (Dkt. # 9) without prejudice.

17 Dated this 12th day of April, 2022.

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21 JAMES L. ROBART  
22 United States District Judge